

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GORDON CHAFFIN

Claimant

VS.

U.S.D. NO. 233

Respondent

AND

KANSAS ASSOCIATION OF SCHOOL BOARDS

Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 231,628

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Julie A. N. Sample, dated September 24, 1998, wherein the Administrative Law Judge denied claimant benefits, finding claimant failed to prove accidental injury arising out of and in the course of his employment with respondent.

ISSUES

- (1) Did claimant suffer accidental injury on January 12, 1998?
- (2) Did claimant's accidental injury arise out of and in the course of his employment with respondent?

Claimant initially claimed an injury on January 9, 1998, but later amended the alleged date of accident to the January 12, 1998 date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges accidental injury on January 12, 1998, when he tripped over a hose in a custodial closet falling, injuring his knee and breaking his glasses.

Claimant's testimony is contradictory in several regards. First, claimant alleges he told Judy Culey, a co-worker, of the accident. Ms. Culey denies this assertion. Claimant also described the hose that he tripped over as being curled around mop buckets, partially in a sink, and partially on the floor. Ms Culey testified the hose was curled in the sink and was not laying over the buckets or on the floor.

Claimant's allegations are eroded by the medical records of his personal physician, Kathy P. Chartrand, D.O. Dr. Chartrand's records of January 21, 1998, fail to mention any on-the-job injury. The first mention of an on-the-job injury in the medical records occurs on January 30, 1998.

Claimant's credibility is further eroded by the claimant's attempt at the July 1998 preliminary hearing to add cervical spine complaints to his list of injuries. Claimant failed to mention any cervical spine complaints to any of the doctors up to this point and did not testify to any cervical spine problems at the March 27, 1998 deposition. It is also significant that claimant has suffered two prior injuries to his cervical spine and upper arms, both of which lead to workers compensation settlements. The first occurred in 1981 and the second in 1984.

Finally, the medical records of claimant's doctor show a history of right knee pain on October 10, 1997, five days before claimant began his employment with respondent.

In workers compensation litigation, it is claimant's burden to prove, by a preponderance of the credible evidence, his entitlement to the benefits claimed. See K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g). In this instance, claimant's allegations do not appear to be supported by the record and, in fact, are contradicted by claimant's own testimony on more than one occasion. In addition, the medical records do not support claimant's version of how this alleged accident occurred.

In this instance, the Administrative Law Judge had the opportunity to observe the live testimony of both claimant and Ms. Culey. The Appeals Board acknowledges some deference should be given to an administrative law judge's conclusion where she has the opportunity to assess the credibility of live witnesses. The Administrative Law Judge appears to have found claimant's credibility lacking. The Appeals Board concludes that claimant has failed to prove that he suffered accidental injury that arose out of and in the course of his employment. Therefore, the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated September 24, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1998.

BOARD MEMBER

c: Dale E. Bennett, Overland Park, KS
Frederick J. Greenbaum, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director